real question is held to be one of fact, whether or not the master had a right to believe that the servant intended to waive his objection to the defect in the materials provided for his work, and to accept an implied contract exempting the master from liability. (Sher. & Red., Neglig., sec. 215; Cooley, Torts, 2d ed. 559.)

It was well pointed out, however, by defendant's counsel in *Lewis* v. *N. Y. & N. E. R. R. Co.*, that the clear reason for the rule that the master owes the servant the inalienable duty of supplying suitable machinery is, that the servant may fairly expect that these matters of which he can know nothing, and of which the master, if he choose, can know everything, will be properly looked to by the master. It seems to follow reasonably that, whenever the servant's knowledge, or opportunity for obtaining knowledge, as to the dangers which will be incurred if he remains in service, is equal to his master's, the master owes him no duty to guard him against such dangers. The supposition is not that the employee, believing the employer has righted matters, goes on with his work without noticing the continuance of the defect. The servant knows as well as his master that the defect cannot be cured at once, and must appreciate the risk he will incur if he remains. To continue in the service is still a voluntary act, even if to leave it be a matter of hardship for the employee; and the principle of *volenti non fit injuria* may well apply.

THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

THE STATUTE OF LIMITATIONS IN CASE OF FRAUD OR MISTAKE, AT LAW AND IN EQUITY. — *From Professor Ames's Lectures.* — FRAUD. — There is much diversity of opinion as to the rights of a plaintiff who has been defrauded of his money, and who has not discovered the fraud until after the period of limitation has elapsed. Inasmuch as the cause of action accrues in such cases when the fraud is consummated, and since the language of the Statute of Limitations is absolute, that no action on the case shall be brought unless within six years of the time when the cause of action accrued, it would seem to be a clear evasion of the statute to allow a recovery at law after the six years. Accordingly, in many jurisdictions recovery is not allowed in such cases.[1]

But in other jurisdictions the courts, influenced by the great hardship upon the plaintiff, have not scrupled to read into the statute an exception in favor of plaintiffs ignorant of the fraud.[2]

There is, however, a mode by which a plaintiff may secure full jus-

[1] *Gibbs* v. *Guild*, 9 Q. B. Div. 59 (*semble*); *Barber* v. *Houston*, L. R. 18 Irish, 475; *Campbell* v. *Vining*, 23 Ill. 525; *Ellis* v. *Kelso*, 18 B. Mon. 296; *Wilson* v. *Ivy*, 32 Miss. 233; *Troup* v. *Smith*, 20 Johns. 33; *Foot* v. *Farrington*, 41 N. Y. 164; *Miller* v. *Wood*, 116 N. Y. 351; *Smith* v. *Bishop*, 9 Vt. 110.

[2] *Bailey* v. *Glover*, 21 Wall. 342; *Homer* v. *Fish*, 1 Pick. 435; *Bowman* v. *Sanborn*, 18 N. H. 205; *Jones* v. *Conoway*, 4 Yeates, 109. It will be remembered that in Massachusetts, New Hampshire, and Pennsylvania there was formerly no chancery jurisdiction.

tice to himself without an evasion of the statute. He has only to seek the recovery of his money in equity instead of at law. It may be thought that equity has no jurisdiction where the only relief sought is the recovery of money got by fraud. But this is a misapprehension. Bills of this nature have been entertained from time immemorial. Indeed, at one time equity had exclusive jurisdiction of such cases. Now, a bill in equity, not being an action on the case, is not within the letter of the statute of James I. Equity, therefore, in giving effect to the statute follows its spirit, and refuses to apply it where its application would work injustice. The statute does not, therefore, begin to run against a defrauded plaintiff until he discovers, or ought, as a reasonable man, to have discovered, the fraud.[1]

MISTAKE. — The preceding observations apply to cases of money paid by mistake, if the receiver was aware of the mistake at the time of payment. If, however, the money was received innocently, the difficulty of working out the rights of the parties at law is increased. The cause of action must accrue either without, or else only after a demand. If no demand is necessary, the defendant may be unjustly condemned to pay the costs of an action although in no default and ignorant of any liability. If a demand must precede the cause of action, a plaintiff, by failing to make one, may postpone the running of the statute indefinitely. These difficulties are obviated in equity. For the plaintiff may proceed in equity without a demand, but if he acts oppressively, he must, although victorious in the suit, pay the costs. And, on the other hand, equity would refuse relief, if the plaintiff, knowing of his right, should allow the six years to go by.

It should be added that the common-law difficulties have been in great measure removed, in some jurisdictions, by special statutory provisions.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — CONTRACT BY UNAUTHORIZED AGENT. — A person who contracts *bona fide*, as agent, without having in fact authority so to do, is personally responsible, on an implied warranty of his authority, to those who enter into agreement with him, believing that he is invested with such authority. *Farmers' Coöp. Trust Co.* v. *Floyd et al.*, 26 N. E. Rep. 110 (Oh.).

AGENCY — LIABILITY OF EMPLOYER FOR INJURY TO SERVANT — PROMISE TO REPAIR. — The fact that the plaintiff remained in defendant's employ after he had discovered that the risk thereof had been increased by defendant's negligence, will not preclude his recovery, where defendant promised to remove the threatened danger. *Rogers et al.* v. *Leyden*, 26 N. E. Rep. 210 (Ind.).

AGENCY — LIABILITY OF EMPLOYER FOR INJURY TO SERVANT — PROMISE TO REPAIR. — Plaintiff was injured in the course of his duty as superintendent of defendants' drawbridge. A few days before this accident, he had called the proper officer's attention to it, saying that somebody was likely to be hurt, but not complaining on account of his own increased danger. *Held*, that he assumed all risks of the employ-

[1] *Booth* v. *Warrington*, 4 Bro. P. C. (Toml. Ed.) 163; *South Sea Co.* v. *Wymondsell*, 3 P. Wms. 143; *Blair* v. *Bromley*, 5 Hare, 542; *Kirby* v. *Lake Co.*, 120 U. S. 130; *Gibbs* v. *Guild*, 9 Q. B. Div. 59.